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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,707	01/24/2002	Thomas H. Gilman	30056/37566	2074

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EXAMINER

LEWIS, KIM M

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 07/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/056,707

Applicant(s)

GILMAN, THOMAS H. 

Examiner

Kim M. Lewis

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Detailed Action</u> .                  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed on 4/16/04 has been received and made of record in the application file wrapper. The abstract and claim 1 have been amended, and claim13 has been canceled.

### ***Drawings***

2. The drawings were received on 4/20/04. These drawings are approved by the examiner.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,571,080 ("Jensen") in view of U.S. Patent No. 5,656,167 ("Martz").

As regards claims 1, 2, 7 and 12, Jensen substantially discloses the claimed invention. More specifically, Jensen discloses a surgical dressing and an adhesive composition. The dressing comprises a backing layer having secured thereto a hydrocolloid adhesive layer. The applicant should note that Jensen discloses hydrocolloid particles in an adhesive matrix (Abstract, col. 3, line 64-col. 4, line 23 and col. 6, lines 44-50). Both the backing and adhesive layers are constructed from the same materials as those of the instant invention. As such, the dressing has the same properties (e.g., liquid and pathogen impermeable, transparency, stretchable and contractible). Jensen fails to teach a plurality of flexible but substantially non-stretchable reinforcing members secured to and extending in spaced relation across the dressing.

Martz, however, teaches it is conventional in the art to add fiber/filament/strip reinforcement members constructed from generally known flexible, non-stretchable material to a support in order to impart stiffness thereto. The addition of such will automatically control the stretch of the support material.

In view of Martz, it would have been obvious to one having ordinary skill in the art to modify Jensen with the addition of a plurality of parallel spaced reinforcing members in order to reduce stretch in the dressing.

As regards claim 3, the examiner contends that the filaments are arranged in spaced parallel groups (see marked-up Fig. 6).

As regards claims 4 and 8, the filaments extend in parallel relation along substantially the same plane.

As regards claims 5, 9, and 11, Martz discloses that the reinforcing members may be embedded into a support, fused to a surface of the support, or adhesively secured to the support material. As such, the modified dressing of Jensen may have the fibers/strips secured to the any side of the backing layer, *i.e.*, adjacent the adhesive layer or opposite the adhesive layer. As to claims 6 and 10, if embedded in the backing layer, the reinforcing members extend between the backing layer and the adhesive layer.

### ***Response to Arguments***

6. Applicant's arguments filed 4/16/04 have been fully considered but they are not persuasive. Applicant's primary argument is that the references relied upon by the examiner disclose wound dressings but not wound closure devices. Applicant contends that the Jensen patent discloses a surgical dressing, not a wound closure device. The applicant also points out that the examiner in the office action states that Jensen fails to teach a plurality of flexible but non-stretchable reinforcing members secured to and extending in spaced relation across a dressing so as to prevent stretching of the dressing in only those directions parallel with members while allowing stretching and contraction of the dressing in all other directions. The applicant further argues that Martz is concerned with a moisture vapor permeable membrane that is reinforced to reduce problems of tearing by means of a nonwoven reinforcing matrix of

filaments extending in a plurality of directions. Applicant also points out that while such reinforcement reduces stretching, it does not prevent it as seen, for example, in Figure 2. Also pointed out is that the filaments extend in plural directions (see Figures 6 and 7), in contrast to applicant's wound closure device in which the members are arranged only in parallel with each other so that stretching may occur in every direction except directions parallel with such reinforcing members.

In response, the examiner contends that nothing in either the Jensen or Martz patents precludes the disclosed devices from being used to close wounds. Moreover, applicant's statement that the filaments of the instant invention are arranged **only** in parallel with each other so that stretching may occur in every direction except directions parallel with such reinforcing member is irrelevant since the limitations on which the applicant relies (*i.e.*, the filaments are arranged **only** in parallel with each other so that stretching may occur in every direction except directions parallel with such reinforcing member) are not stated in the claims (***emphasis added by the examiner***). It is the claims that define the claimed invention, and it is claims, not the specification that are anticipated or unpatentable. *Constant v. Advanced Micro-Devices Inc.*, 7 USPQ2d 1064,

### **Conclusion**

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.**

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is 703.308.1191. The examiner can normally be reached on Mondays to Thursdays from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 703.308.0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3743

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kim M. Lewis  
Primary Examiner  
Art Unit 3743

kml  
July 19, 2004